

REMARKS

In the Office Action dated June 18, 2008, Claims 18 and 21 are pending. Claims 18 and 21 are rejected. Claims 18 and 21 are rejected under 35 U.S.C. 102(b) as allegedly being anticipated by GenBank accession number AA101561 ("AA101561"), October 1996. As described below in response, claim 21 is amended, and new claim 22 has been added.

New claim 22 is identical to pending claim 18, except that the transitional phrase "having" is replaced by "consisting of." The amendments are clearly supported by the specification and do not add new matter.

The Examiner maintains the rejection of claim 18 under 35 U.S.C. 102(b) as allegedly anticipated by AA101561. The Examiner alleges that the DNA molecule having GenBank accession no. AA101561 meets the limitation of the DNA oligomer recited in claims 18 and 21 because GenBank accession no. AA101561 discloses a molecule (oligomer) that is 99.2% identical to SEQ ID NO:2 of the instant application over a region of 377 bases and SEQ ID NO:2 is 74.5% identical to the whole molecule of instant SEQ ID NO:1 as recited in instant claims and with 99.1% local similarity. Thus, the DNA fragment (oligomers) of AA101561 can allegedly hybridize to a DNA molecule having a nucleotide sequence of nucleotides 16-912 or 97-912 of SEQ ID NO:1 with high stringency conditions as recited in instant claim 18.

With respect to pending (and previously amended) claim 18, it is respectfully brought to the Examiner's attention that in Applicants' response of March 27, 2008, claim 18 was amended to require that the claimed oligomer be capable of hybridizing in full-length as well as under high stringency. It is respectfully submitted that the Examiner has either inadvertently overlooked this amendment to claim 18 or has not accorded the added structural feature its proper weight.

The amendment to claim 18 recites that the claimed oligomer hybridizes along its entire (i.e. full) length to a sequence consisting of SEQ ID NO: 1, nucleotides 16-912 of SEQ ID NO:1 or nucleotides 97-912 of SEQ ID NO: 1. It is respectfully submitted that hybridizing AA101561 to SEQ ID NO: 1 results in an unhybridized portion of 36 bases on the 5' end of AA101561. Further, when AA101561 hybridizes with the sequence consisting of either nucleotides 16-912 of SEQ ID NO:1 or the sequence of nucleotides 97-912 of SEQ ID NO: 1, the percent of AA101561 that is unhybridized is even greater. Accordingly, it is respectfully submitted that because AA101561 does not meet all of the limitations of claim 18, the sequence cited by Genbank accession number AA101561 does not anticipate currently pending claim 18.

Withdrawal of the rejection of claim 18 under § 102(b) is respectfully requested.

With respect to the rejection of claim 21, the Examiner alleges it is appropriate to interpret the recitation "a DNA oligomer having a nucleotide sequence of nucleotides 16-912 or 97-912 of SEQ ID NO:1," as recited in instant claim 21, as comprising a nucleotide sequence of nucleotides 16-912 or 97-912 of SEQ ID NO:1. Therefore, the Examiner concludes that the term having constitutes open language, and thus encompasses a DNA molecule (oligomer) comprising any fragments with different lengths of nucleotides 16-912 or 97-912 of SEQ ID NO: 1.

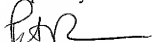
Although Applicants respectfully disagree with the Examiner's rationale for maintaining the rejection under 35 U.S.C. § 102(b), claim 21 is amended herein by substituting the term consisting of for the allegedly open term having. Therefore, with respect to currently amended claim 21, the polynucleotide sequence of Genbank accession AA101561 is not identical to a DNA oligomer consisting of the sequence of SEQ ID NO: 1, nucleotides 16-912 of SEQ ID NO:1 or nucleotides 97-912 of SEQ ID NO: 1, and accordingly, does not anticipate claim 21.

Applicants respectfully request withdrawal of the rejection of claims 18 and 21 under 35 U.S.C. § 102(b). It is further respectfully submitted that claims 18 and 21-22 are in condition for allowance.

This Response addresses each of the Examiner's rejections, therefore favorable consideration of all pending claims is respectfully requested.

Applicants therefore respectfully submit that the present application is in condition for allowance which action is earnestly solicited.

Respectfully submitted,



Peter I. Bernstein

Registration No. 43,497

SCULLY, SCOTT, MURPHY & PRESSER, P. C.
400 Garden City Plaza-STE 300
Garden City, New York 11530
(516) 742-4343
PIB/TG:ab